

SENATE BILL 508  
By Kilby

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 63, to enact the Tennessee Orthotics, Prosthetics, and Pedorthics Practice Act of 2005.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, is amended by adding Sections 2 through 17 of this bill as a new, appropriately designated chapter thereto.

SECTION 2. This chapter shall be known and may be cited as the "Tennessee Orthotics, Prosthetics, and Pedorthics Practice Act."

SECTION 3. The general assembly finds that:

(1) The practice of orthotics and prosthetics in this state is a healing art, as defined in § 63-1-102(2), and is recognized as an allied health profession by the American Medical Association, with educational standards established by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) and the National Commission on Orthotic and Prosthetic Education (NCOPE). Likewise, the practice of pedorthics in the state is a healing art and is recognized as an allied health profession by the American Academy of Orthopaedic Surgeons, with educational standards established by the Board for Certification in Pedorthics.

(2) The increasing population of elderly and physically challenged individuals who need orthotic, prosthetic, and pedorthic services requires that the orthotic, prosthetic, and pedorthic professions be regulated to ensure the provision of high-quality services and devices. The people of Tennessee deserve the best care available and will benefit from the assurance of initial and ongoing professional competence of the orthotists, prosthetists, and pedorthists practicing in this state.

(3) The practice of orthotics, prosthetics, and pedorthics serves to improve and enhance the lives of individuals with disabilities by enabling them to resume productive lives following serious illness, injury, or trauma. Unregulated dispensing of orthotic, prosthetic, and pedorthic care does not adequately meet the needs or serve the interests of the public.

(4) In keeping with state requirements imposed on similar healing arts, licensure of the orthotic, prosthetic, and pedorthic professions will help ensure the health and safety of consumers, as well as maximize their functional abilities and productivity levels. This chapter shall be liberally construed to best carry out these subjects and purposes.

SECTION 4. As used in this chapter, unless the context otherwise requires:

(1) "Board" means the Tennessee board of registration in podiatry.

(2) "Committee" means the committee on orthotics, prosthetics, and pedorthics.

(3) "Custom fabricated and fitted device" means an orthosis, prosthesis, or pedorthic device which is fabricated to original measurements or a mold for use by a patient in accordance with a prescription from a health care practitioner authorized by law to write such prescriptions and which requires substantial clinical and technical judgment in its design and fitting.

(4) "Custom fitted device" means a prefabricated orthosis, prosthesis, or pedorthic device sized or modified for use by the patient in accordance with a prescription from a health care practitioner authorized by law to write such prescriptions, and which requires substantial clinical judgment and substantive alteration for appropriate use.

(5) "Department" means the department of health.

(6) "Director" means the director of the division of health related boards.

(7) "Commissioner" means the commissioner of health.

(8) "Division" means the division of health related boards.

(9) "Facility" means the business location where orthotic, prosthetic, or pedorthic care is provided. In the case of an orthotic/prosthetic facility, it has the appropriate clinical and laboratory space and equipment to provide comprehensive orthotic or prosthetic care and, in the case of a pedorthic facility, it has the appropriate clinical space and equipment to provide pedorthic care. Licensed orthotists, prosthetists, and pedorthists must be available to either provide care or supervise the provision of care by non-licensed staff.

(10) "Level of competence" means a hierarchical position that an individual occupies within a field or profession relative to other practitioners in the profession.

(11) "Licensed orthotist" means a person licensed under this act to practice orthotics and who represents himself or herself to the public by a title or by a description of services that includes the term "orthotic", "orthotist", "brace", or a similar title or description of services.

(12) "Licensed pedorthist" means a person licensed under this act to practice pedorthics and who represents himself or herself to the public by a title or by a description of services that includes the term "pedorthic", "pedorthist", or a similar title or description of services.

(13) "Licensed physician" means a person licensed under title 63, chapter 6.

(14) "Licensed podiatrist" means a person licensed under title 63, chapter 3.

(15) "Licensed prosthetist" means a person licensed under this chapter to practice prosthetics and who represents to the public by a title or by a description of services that includes the term "prosthetic", "prosthetist", "artificial limb", or a similar title or description of services.

(16) "Orthosis" means a custom-designed, fabricated, fitted or modified device to correct, support or compensate for a neuro-musculoskeletal disorder or acquired condition. "Orthosis" does not include fabric or elastic supports, corsets, arch supports, low-temperature plastic splints, trusses, elastic hoses, canes, crutches, soft cervical collars, dental appliances, or other similar devices that are carried in stock and sold as "over-the-counter" items by a drug store, department store, corset shop, or surgical supply facility.

(17) "Orthotic and prosthetic education program" means a course of instruction accredited by the Commission on Accreditation of Allied Health Education Programs, consisting of:

(A) An adequate curriculum of college level training and instruction in math, physics, biology, chemistry and psychology; and

(B) A specific curriculum in orthotic or prosthetic courses, including:

(i) Lectures covering pertinent anatomy, biomechanics, pathomechanics, prosthetic-orthotic components and materials, training and functional capabilities, prosthetic or orthotic performance evaluation, prescription considerations, etiology of amputations and disease processes necessitating prosthetic or orthotic use, and medical management;

(ii) Subject matter related to pediatric and geriatric problems;

(iii) Instruction in acute care techniques, such as immediate and early post-surgical prosthetics and fracture bracing techniques; and

(iv) Lectures, demonstrations, and laboratory experiences related to the entire process of measuring, casting, fitting, fabricating, aligning, and completing prostheses or orthoses.

(18) "Orthotics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under an order from a licensed physician or podiatrist for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(19) "Orthotist" means an allied health professional who is specifically trained and educated to provide or manage the provision of a custom-designed, fabricated, modified and fitted external orthosis to an orthotic patient, based on a clinical assessment and a prescription from a health care practitioner authorized by law to write such prescriptions, to restore physiological function or cosmesis.

(20) "Over-the-counter device" means a prefabricated, mass-produced device that is prepackaged and requires no professional advice or judgment in either size selection or use, including fabric or elastic supports, corsets, generic arch supports and elastic hoses.

(21) "Off-the-shelf device" means a prefabricated prosthesis or orthosis sized or modified for use by the patient in accordance with a prescription from a health care practitioner authorized by law to write such prescriptions and which does not require substantial clinical judgment and substantive alteration for appropriate use.

(22) "Pedorthic device" means therapeutic footwear, foot orthoses for use at the ankle or below, and modified footwear made for therapeutic purposes, as prescribed by a physician or podiatrist. "Pedorthic device" does not include non-therapeutic accommodative inlays or non-therapeutic accommodative footwear, regardless of method of manufacture, shoe modifications made for non-

therapeutic purposes, unmodified, over-the-counter shoes, or prefabricated foot care products.

(23) "Pedorthic education program" means a course of instruction accredited by the Board for Certification in Pedorthics consisting of:

(A) A basic curriculum of instruction in foot-related pathology of diseases, anatomy, and biomechanics;

(B) A specific curriculum in pedorthic courses, including lectures covering shoes, foot orthoses, and shoe modifications, pedorthic components and materials, training and functional capabilities, pedorthic performance evaluation, prescription considerations, etiology of disease processes necessitating use of pedorthic devices, medical management, subject matter related to pediatric and geriatric problems; and

(C) Lectures, demonstrations, and laboratory experiences related to the entire process of measuring and casting, fitting, fabricating, aligning, and completing pedorthic devices.

(24) "Pedorthics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a pedorthic device under an order from a licensed physician or podiatrist for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(25) "Pedorthist" means a person who measures, designs, fabricates, fits, or services pedorthic devices and assists in the formulation of the order of pedorthic devices as ordered by a licensed physician or podiatrist for the support or correction of disabilities caused by neuro-musculoskeletal diseases, injuries, or deformities.

(26) "Person" means a natural person.

(27) "Prosthesis" means a custom designed, fabricated, fitted, or modified device to replace an absent external limb for purposes of restoring physiological function or cosmesis. "Prosthesis" does not include artificial eyes, ears, or dental appliances, cosmetic devices such as artificial breasts, eyelashes, or wigs, or other devices that do not have a significant impact on the musculoskeletal functions of the body.

(28) "Prosthetics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing prosthesis under an order from a licensed physician or podiatrist.

(29) "Prosthetist" means an allied health professional who is specifically trained and educated to provide or manage the provision of a custom designed, fabricated, modified, and fitted external limb prosthesis to a prosthetic patient, based on a clinical assessment and a prescription from a health care practitioner authorized to write such prescriptions, to restore physiological function or cosmesis.

(30) "Prosthetist/Orthotist" means a person who practices both disciplines of prosthetics and orthotics and who represents himself or herself to the public by a title or by a description of services that includes both terms.

(31) "Resident" means a person who has completed an education program in either orthotics or prosthetics and is continuing such person's clinical education in a residency program approved by the board.

SECTION 5. This chapter shall not be construed to prohibit:

(1) A physician or podiatrist licensed in this state from engaging in the practice for which such physician or podiatrist is licensed;

(2) A person licensed in this state under any other act from engaging in the practice for which such person is licensed;

(3) The practice of orthotics, prosthetics, or pedorthics by a person who is employed by the federal government or any bureau, division, or agency of the federal government while in the discharge of the employee's official duties;

(4) The practice of orthotics, prosthetics, or pedorthics by:

(A) A student enrolled in a school of orthotics, prosthetics, or pedorthics;

(B) A resident continuing such resident's clinical education in a residency accredited by the National Commission on Orthotic and Prosthetic Education or;

(C) A student in a qualified work experience program or internship in pedorthics;

(5) The practice of orthotics, prosthetics, or pedorthics by one who is an orthotist, prosthetist, or pedorthist licensed under the laws of another state or territory of the United States or another country and who has applied in writing to the board, in a form and substance satisfactory to the division, for a license as an orthotist, prosthetist, or pedorthist and who is qualified to receive the license pursuant to this chapter until:

(A) The expiration of one (1) year after the filing of the written application;

(B) The withdrawal of the application; or

(C) The denial of the application by the board;

(6) A person licensed by this state as a physical therapist or occupational therapist from engaging in such person's profession.

#### SECTION 6.

(a) There is hereby established a committee on orthotics, prosthetics, and pedorthics, which shall assist and report to the board in implementing and enforcing this chapter.

(b) The committee shall consist of six (6) members appointed by the commissioner, as follows:



(1) Three (3) members of the committee shall be licensed orthotists, prosthetists, or pedorthists engaged in the active practice of their profession. These three (3) members may be licensed in more than one (1) discipline but must equally represent all three (3) disciplines. Each of these three (3) members shall reside in a different grand division of the state. These three (3) members may be chosen by the commissioner from a list of persons nominated by the Tennessee Orthotic and Prosthetic Facilities, Incorporated. Prior to the board's promulgation of rules governing licensure, persons shall be eligible for appointment to these three (3) positions if they have been continuously practicing orthotics, prosthetics, or pedorthics in this state for at least five (5) years.

(2) One (1) member of the committee shall be a member of the public who is a consumer of orthotic, prosthetic, or pedorthic professional services, but has no relationship, financial or otherwise, with any person licensed under this chapter which would prevent or hinder that member from representing the interests of the public.

(3) One (1) member of the committee shall be a physician licensed to practice medicine in this state.

(4) One (1) member of the committee shall be a podiatrist licensed to practice podiatry in this state.

(c) Each member of the committee shall serve a term of three (3) years, except that of the initial appointments to the committee, two (2) members shall be appointed for one (1) year, two (2) members shall be appointed for two (2) years, and two (2) members shall be appointed for three (3) years. Each member shall hold office until the appointment of such member's successor. No member of the board shall serve more

than eight (8) consecutive years or two (2) full terms, whichever is greater. Vacancies for unexpired terms shall be filled by the commissioner.

(d) The committee shall receive administrative, investigative and legal support from the division.

(e) The committee shall meet at least twice a year and at such other times as are necessary to conduct its business.

(f) The committee shall elect annually from its membership a chair and a secretary. Four (4) members of the committee shall constitute a quorum. A majority vote of the members present shall be required to authorize committee action on any matter.

(g) The members of the committee shall serve without pay, but shall be entitled to reimbursement for travel and related expenses incurred in the performance of their responsibilities on the committee. All reimbursement for travel and other expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

#### SECTION 7.

(a) The board shall have the authority, by rules and regulations promulgated in compliance with all requirements of the Uniform Administrative Procedures Act compiled in title 4, chapter 5, to:

(1) Establish licensure categories and issue licenses for prosthetists, orthotists and pedorthists;

(2) Establish the qualifications, educational courses, curriculum, hours, and standards which are prerequisite to issuance of all levels and types of licensure established pursuant to subdivision (1); provided, however, such qualifications shall include the following:

(A) To qualify for a license to practice orthotics or prosthetics, a person shall:

(i) Possess a baccalaureate degree or equivalent semester hours to four (4) years of study at a four-year college or university;

(ii) Complete the amount of formal training, including but not limited to any necessary hours of classroom education and clinical practice required by the board;

(iii) Complete a clinical residency in the professional area for which a license is sought in accordance with standards, guidelines, or procedures for residencies inside or outside this state established and approved by the board. The majority of training must be devoted to services performed under the supervision of a licensed practitioner of orthotics or prosthetics or a person who has obtained certification from the American Board for Certification in Orthotics and Prosthetics, Inc. or the Board for Orthotist/Prosthetist Certification;

(iv) Pass all written, practical, and oral examinations that are required and approved by the board; and

(v) Be qualified to practice in accordance with commonly accepted standards of orthotic and prosthetic care acceptable to the board.

(B) To qualify for a license to practice pedorthics, a person shall:

(i) Possess a high school diploma or comparable credential approved by the board;

(ii) Complete the amount of formal training, including but not limited to any necessary hours of classroom education and clinical practice required by the board;

(iii) Pass all examinations that are required and approved by the board;

(iv) Complete a qualified work experience program or internship in pedorthics in accordance with standards and procedures established by the board; and

(v) Be qualified to practice in accordance with commonly accepted standards of pedorthic care acceptable to the board.

(C) A person may be licensed in more than one discipline.

(3) Establish the circumstances or conditions, if any, under which persons shall be entitled to exemption from licensure during training, while waiting to take or receive the results of any required examination, and/or upon meeting specified minimum educational and clinical qualifications;

(4) Select the examination or examinations to be utilized as the board's licensure examination or examinations and the prerequisites, if any, for admission to the examination or examinations. The board is authorized to enter into a contract or agreement with the chosen examination service or services or select an intermediary between the board and the examination service or services to process applicants for the examination or examinations;

(5) Establish any other criteria for issuance of licensure, which are reasonably related to the safe and competent performance of prosthetics, orthotics and pedorthics;

(6) Accredited continuing education courses;

(7) Establish the fees to be paid for each of the following:

- (A) Application for licensure;
- (B) Renewal or reinstatement of licensure;
- (C) Late renewal of licensure;
- (D) Application for continuing education course accreditation;
- (E) Renewal or reinstatement of continuing education course accreditation;
- (F) Late renewal of continuing education course accreditation;
- (G) Duplicate or replacement license; and
- (H) Exemption issuance.

The fees shall be set at a level which is adequate to pay all the expenses of implementing and administering this act. All deposits and disbursements shall be handled in accordance with §63-1-137.

(8) Establish the continuing education requirements for license holders which shall include the frequency of reporting, number of hours, types of courses, approval of courses, methods of proving compliance, penalties for violation and all fees necessary for implementation of the continuing education process; and

(9) Regulate the nature, manner, content and extent of advertising by practitioners who are under the jurisdiction of the board.

(b) The board shall have the authority to:

(1) Conduct disciplinary hearings in accordance with the Uniform Administrative Procedures Act compiled in title 4, chapter 5. For purposes of contested case hearings and disciplinary matters, three (3) or more members shall constitute a quorum. The board is authorized, when it is deemed necessary, to split into panels of three (3) or more, each to conduct contested case hearings

on disciplinary matters, or to allow the committee to conduct such contested case hearings. A majority vote of the members present on any duly constituted panel shall be required to authorize board action in disciplinary matters and contested case hearings. A board officer shall have the authority to appoint board members to serve, as necessary, on the panels. The existence of a public member on any panel creates no rights in any individual concerning the composition of any panel in any disciplinary matter or contested case hearing. Notwithstanding the provisions of § 4-5-314(e) to the contrary, unavailability of a member of any panel before rendition of a final order shall not require substitution of another member unless the unavailability means that less than the quorum of members that is required by this section for contested case hearings or disciplinary matters is present. Any substitute required shall use any existing record and may conduct any further proceedings as is necessary in the interest of justice.

(2) Issue advisory private letter rulings to any affected “licensed practitioner” or license holder who makes such a request regarding any matters within the board's primary jurisdiction. Such private letter ruling shall only affect the person making such inquiry, and shall have no precedential value for any other inquiry or future contested case that might come before the board. Any dispute regarding a private letter ruling may, if the board chooses to do so, be resolved pursuant to the declaratory order provisions of § 4-5-223.

(c) In performing its duties under this chapter, the board shall utilize the committee in whatever ways will best assist the board. The board is authorized to allow the committee to perform any of the following tasks, subject to review and approval by the board:

- (1) Develop rules and regulations on any of the subjects listed in subsection (a);
  - (2) Conduct disciplinary hearings involving any persons licensed under this act;
  - (3) Prepare private letter rulings of the type described in subsection (b)(2);
  - (4) Review license applications submitted under this act and make recommendations to the board for appropriate action on each application; and
  - (5) Perform any other task assigned to the committee by the board.
- (d) The board must approve all actions and recommendations of the committee before they can become final.

SECTION 8. A licensed orthotist, prosthetist or pedorthist may provide care or services only if the care or services are provided pursuant to an order from a licensed physician or podiatrist.

#### SECTION 9.

(a) The scope of practice of a licensed orthotist, prosthetist, or pedorthist shall not include the right to diagnose a medical problem or condition or the right to give medical advice as to the nature, cause, or treatment for the problem or condition for which the orthosis, prosthesis, or pedorthic device is being dispensed. However, the scope of practice of a licensed orthotist, prosthetist, or pedorthist does include the right to provide information or demonstration regarding the proper use and care of the device and to make adjustments to the device as needed.

(b) No person shall dispense or sell an over-the-counter device or an off-the-shelf device based upon an image of the customer's limb captured by the person through a mold, cast, scanning device, digital appliance, or pressure sensitive device, unless the

customer has first presented to that person a written prescription for that device from a health care practitioner authorized by law to write such a prescription.

#### SECTION 10.

(a) On and after January 1, 2008, no person shall practice orthotics, prosthetics, or pedorthics in this state, or hold out as being able to practice either profession, or dispense an orthosis, prosthesis, or pedorthic device, unless such person is licensed in accordance with the requirements of this chapter.

(b) Until January 1, 2008, a person certified by the American Board for Certification in Orthotics and Prosthetics, Inc., with the title of Certified Orthotist (CO), Certified Prosthetist (CP), or Certified Orthotist-Prosthetist (CPO) or The Board for Orthotist/Prosthetist Certification with the title of Board of Orthotic Certification – Orthotist (BOCO) or Board of Certification – Prosthetist (BOCP) or holding similar certifications from other accrediting bodies with equivalent educational requirements and examination standards may apply for and shall be granted orthotic or prosthetic licensure under this chapter upon payment of the required fee. After that date, any applicant for initial licensure as an orthotist or a prosthetist shall meet the requirements of this chapter regarding licensure.

(c) Until January 1, 2008, a person certified as a Certified Pedorthist (CPED) by the Board of Certification in Pedorthics, Incorporated, or a person certified as a CO, CP or CPO by the American Board for Certification in Orthotics and Prosthetics, Inc. or certified as a BOCO or BOCP by the Board for Orthotist/Prosthetist Certification or holding similar certifications from other accrediting bodies with equivalent educational requirements and examination standards may apply for and shall be granted pedorthic licensure under this chapter upon payment of the required fee. After that date, any



applicant for initial licensure as a pedorthist shall meet the requirements of this chapter regarding licensure.

(d) Notwithstanding any other provision of this chapter to the contrary, a person who has practiced full-time for a minimum of the past five (5) years in a prosthetic/orthotic facility as an orthotist or prosthetist or in a pedorthic facility as a pedorthist may file an application with the board before January 1, 2007 in order to continue to practice orthotics, prosthetics, or pedorthics. The applicant shall be issued a license to practice orthotics, prosthetics, or pedorthics under the provisions of this act without examination upon receipt by the division of payment of the licensing fee required and after the board has completed an investigation of the applicant's work history. The board shall complete its investigation for the purposes of this section within six (6) months of the date of the application. The investigation may include, but is not limited to, completion by the applicant of a questionnaire regarding the applicant's work history and scope of practice.

#### SECTION 11.

(a) Licenses shall be issued and renewed by the board pursuant to the division's biennial issuance and renewal system.

(b) Any person issued a license to practice who wishes to retire that license shall file with the board an affidavit on a form to be furnished by the board, which affidavit shall state the date on which the person retired from such practice and such other facts as shall tend to verify such retirement as the board shall deem necessary.

(c) Any such person who thereafter wishes to reenter practice must request reinstatement of licensure.

(d) Any license issued by the board shall contain the name of the person to whom it is issued, the address of the person, the date and number of the license and

such other information as the board deems necessary. The address contained on the license shall be the address where all correspondence and renewal forms from the board shall be sent during the two (2) years for which the license has been issued. Any person whose address changes from the address contained on the license shall, within thirty (30) days thereafter, notify the board of the address change. The most recent address contained in the board's records for each license holder shall be the address deemed sufficient for purposes of service of process.

SECTION 12. Every person issued a license pursuant to this chapter either shall keep such license prominently displayed in the office or place in which such person practices or shall have it stored in a place from which it can be immediately produced upon request of a patient or a representative of the department.

#### SECTION 13.

(a) A person whose license has been lost or destroyed may make application to the board for a replacement. Such application shall be accompanied by an affidavit setting out the facts concerning the loss or destruction of the original license.

(b) Any person whose name is changed by marriage or court order may surrender such person's license and apply to the board a replacement license.

#### SECTION 14.

(a) The board has the power and duty to:

(1) Deny, restrict or condition an application for a license to any applicant who applies for the same through reciprocity or otherwise;

(2) Permanently or temporarily withhold issuance of a license;

(3) Suspend, limit or restrict a previously issued license for such time and in such manner as the board may determine;

(4) Reprimand, suspend, revoke or take such other disciplinary action in relation to an applicant or license holder as the board in its discretion may deem proper; or

(5) Permanently revoke a license.

(b) The grounds upon which the board shall exercise such power include, but are not limited to, circumstances wherein the person:

(1) Is guilty of fraud or deceit in the procurement or holding of the license;

(2) Has been convicted of a felony in a court of competent jurisdiction, either within or outside of this state, unless the conviction has been reversed and the holder of the license discharged or acquitted, or if the holder has been pardoned with full restoration of civil rights, in which case the license shall be restored;

(3) Is or has been afflicted with any medical problem, disability, or addiction, which, in the opinion of the board, would impair professional competence;

(4) Has knowingly aided and abetted a person who is not a license holder, or not otherwise authorized pursuant to this chapter, to perform the duties of a license holder under this chapter;

(5) Has undertaken or engaged in any practice beyond the scope of duties permitted a license holder under this chapter;

(6) Has impersonated a license holder or former license holder or is under an assumed name performing the duties authorized to be performed only by a licensed person;

(7) Has been found guilty of violations of a code of ethics which the board shall establish by regulation;

(8) Is or has been found guilty of incompetence or negligence in the performance as a license holder;

(9) Acts in a manner unprofessional, dishonorable or unethical or has been found guilty of unprofessional, dishonorable or unethical conduct;

(10) Violates or attempts to violate, directly or indirectly, or assists or aids in the violation of, or conspires to violate, any provision of this chapter or any lawful order of the board issued pursuant thereto, or any of the rules or regulations promulgated pursuant thereto, or any criminal statute of the state;

(11) Is habitually intoxicated or engages in the personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances or other drugs or stimulants in such manner as to adversely affect the person's ability to practice;

(12) Has received a disciplinary action from another state or territory of the United States that has licensed or certified the person to practice in that state for any acts or omissions which would constitute grounds for discipline of a person licensed in this state. A certified copy of the initial or final order or other equivalent document memorializing the disciplinary action from the disciplining state or territory shall constitute prima facie evidence of violation of this section and be sufficient grounds upon which to deny, restrict or condition licensure or renewal or discipline a person certified in this state.

(c) In enforcing this section, the board, upon probable cause, shall have authority to compel an applicant or license holder to submit to a mental or physical examination conducted by a designated committee of at least three (3) practicing physicians, including a psychiatrist if a question of mental condition is involved. The applicant or license holder may have an independent medical practitioner present during such

examination, and may have an independent physical or mental examination, which examination report shall be filed with the board for consideration. The committee will submit a report of its findings to the board.

(d) Any person who in good faith shall report to the board any information that a license holder is or may be in violation of any of the provisions of this chapter shall not be subject to suit for civil damages as a result thereof.

(e)

(1) All materials, documents and other matters relating to, compiled or created pursuant to an investigation conducted by the board's investigators within the board's jurisdiction shall be exempt from the public records act until the filing of a notice of charges. After the filing of a notice of charges, only the information and those materials and documents upon which the charges are based are available for disclosure under the public records act; provided, that the identifying information of the following, as well as all investigator created documents and reports, shall remain confidential at all times unless and until introduced in the proceedings:

(A) A complainant;

(B) Any witness who requests anonymity;

(C) A patient; and

(D) Medical records.

(2) This section does not modify or limit the prehearing discovery provisions set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(f) The board retains jurisdiction to modify or refuse to modify, upon request of any party, any of its orders issued pursuant to this section in compliance with procedures

established by the board. The board, pursuant to duly promulgated rules, may, whenever a final order is issued after a disciplinary contested case hearing which contains findings that a licensee or other person has violated any provision of this chapter, assess the costs, including attorney fees, directly related to the prosecution of the case against the licensee or person.

(g) Any elected officer of the board, or any duly appointed or elected chair of any panel of the board, or any screening panel, or any duly appointed member of the committee, has the authority to administer oaths to witnesses, and upon probable cause being established, issue investigative subpoenas for the attendance of witnesses and the production of documents and records.

#### SECTION 15.

(a)

(1) Any person who practices in this state without having first complied with the provisions of this chapter commits a Class B misdemeanor for each instance of such practice.

(2) Each day any person practices without first obtaining a valid license or renewing a license constitutes a separate offense.

(3) Any person filing or attempting to file, as the person's own, a diploma or license of another or a forged affidavit of identification commits a Class E felony.

(b) All fines for offenses under this chapter shall be paid over to the board to constitute a part of the funds of the board to be paid into the state treasury.

#### SECTION 16.

(a) In addition to the powers and duties expressed in this chapter with respect to the denial of license, the board is empowered to petition any circuit or chancery court

having jurisdiction over any person within this state who is practicing without a license, or to whom a license has been denied, or whose license has been suspended or revoked by action of the board, to enjoin such person from continuing to practice within this state.

(b) Jurisdiction is conferred upon the circuit and chancery courts of this state to hear and determine all such causes as equity causes and exercise full and complete jurisdiction in such injunctive proceedings, but nothing in this section shall be construed as conferring criminal jurisdiction upon any court not now possessing such criminal jurisdiction, nor shall any such court, as an incident to the injunctive proceedings herein authorized, have the power to assess the criminal penalties hereinafter set out.

#### SECTION 17.

(a) The board may utilize one (1) or more screening panels in its investigative and disciplinary process to assure that complaints filed and investigations conducted are meritorious, and to act as a mechanism for resolution of complaints and/or diversion to professional peer review organizations or impaired professionals' associations or foundations of those cases which the board, through established guidelines, deems appropriate.

(b) The activities of the screening panels and any mediation or arbitration sessions shall not be construed as meetings of an agency for purposes of the open meetings act and shall remain confidential. The members of the screening panels, mediators and arbitrators have a deliberative privilege and the same immunity as provided by law for the board, and are not subject to deposition or subpoena to testify regarding any matter or issue raised in any contested case, criminal prosecution or civil lawsuit which may result from or be incident to cases processed before them.

(c) The screening panel has the authority to administer oaths to witnesses. Any documents or records produced at the screening panel shall be exempt from the public records act until there is a filing of a notice of charges and such documents or records form the basis for such filing of a notice of charges.

(d) Members of a screening panel may be drawn from among the membership of the board or committee, or members may be appointed by the board. Non-board members shall meet the requirements of membership on the board and may include a consumer member. A board member serving on a panel shall not participate in a contested case involving any matter heard by the panel.

(e) Each screening panel shall be instructed as to the statutes, rules, regulations and philosophies of the board as it pertains to disciplinary action and to the procedures to be followed by the panel. Each screening panel shall be provided a copy of Rule 31 of the Rules of the Tennessee Supreme Court for review by members of the screening panel for general guidance as to the principles of mediation and alternative dispute resolution.

(f) A board does not have authority to compel any party to participate in a screening panel, and no prejudice will be incurred if the party chooses not to participate or to accept the offer of the screening panel.

SECTION 18. This act shall take effect, for purposes of making appointments to the committee and promulgation of rules, upon becoming a law. For all other purposes, this act shall take effect on January 1, 2006, the public welfare requiring it.